In the Supreme Court of the United States.

DECEMBER TERM, 1869.

No. 256.

In Admiralty.

THE STEAM FERRY-BOAT "D. S. GREGORY," the New-Jersey Rail-Road and Transportation Company, claimants, Appellants,

vs.

ANN CAVAN.

STATEMENT AND BRIEF FOR "D. S. GREGORY."

SIDNEY WEBSTER,
Advocate.

Supreme Court of the United States.

THE STEAM FERRY-BOAT "D. S. GREGORY," THE NEW-JERSEY RAIL-ROAD AND TRANSPORTATATION COMPANY, Claimants, Appellants,

vs.

ANN CAVAN.

BRIEF FOR THE "D. S. GREGORY," &c.

The libellant received injuries by a collision between the steamer D. S. Gregory—a ferry-boat, belonging to the New-Jersey Rail-Road and Transportation Company, plying regularly across the Hudson River, between Montgomery-street in Jersey City, and Desbrosses-street, in New-York—and the Steamer George Washington, an excursion boat, chartered to carry passengers on the Sunday morning in question down the river. The collision occurred between 10 and 11 o'clock in the morning of Sunday, September 16, 1866. The weather was clear, and the river, in the vicinity of the collision, quite free of boats of all kinds. The ferry-boat, in starting, moved from her slip well out into the river, perhaps one-third across, and then headed up and across in a direction generally described as east by northeast. The slip of the ferry-boat on the New-York side is about twelve hundred yards

higher up than her slip on the Jersey side; and, in a straight diagonal line, is some nineteen hundred yards therefrom. When the ferry-boat was about six hundred yards from the New-York piers, and seventy-five yards south of its New-York slip, or thereabouts, its pilot first saw the George Washington about six hundred yards off, coming directly down the river, in a line two hundred yards off the New-York piers. The pilot of the George Washington saw the ferry-boat soon after leaving Christopher-street pier, on his starboard quarter, and, *at that time*, the latter was head-up the river, more up than across. The ferry-boat, immediately on seeing the Washington, blew one distinct blast of its whistle as a signal that its course was to the right, and into its slip, and thereupon turned its head more in that direction. By the time the Washington reached Pier 43, the ferry-boat had so changed her course that it was decidedly more across than up the river. After her course was thus changed, the pilot of the Washington, well knowing the business, the track and the destined slip of the ferry-boat, as its pilot admits, paid no attention to the signal of the latter, did not change his course, but kept straight on, directly across the track of the ferry-boat. In a half minute from the first signal, the ferry-boat blew another distinct blast of its whistle, and then a third, but with no response from the Washington, which, continuing its course with speed unabated, struck the ferry-boat at nearly right angles, and, at a point in the river, some two hundred yards due west of Pier No. 39, (Vestry-street,) and a little below her own slip, (Desbrosses-street,) thereby severely injuring the libellant, as well as the ferry-boat.

First Point.

When the Washington first discovered the ferry-boat on her starboard quarter, the former was bound to keep to the right; and when subsequently the two were crossing

each other so as to involve greater risk of collision, she was also bound to keep to the right, and out of the way of the ferry-boat.

Michael Sherman, captain and pilot of Washington, testified, (folio 341,) that ferry-boat was "off to the westward, well off," when he discovered her.

Other portions of the testimony are explicit, that the Washington had the ferry-boat on her starboard, and *none contradicts.*

Mr. Justice Blatchford, in the District Court, in giving his opinion, held, "that the Washington, having the Gregory on "her starboard hand, was *bound to keep out of her way.*"

In that situation, it was, by Rule 14th, the duty of the Washington to keep out of the way of the ferry-boat, whose track and precise destination the pilot of the Washington admits (folio 354) he well knew.

The pilot of Washington testifies, (folio 343,) that he did not make, or attempt to make, any change in his wheel, up to the point of collision; that (folio 351) there was nothing when he first saw the ferry-boat to prevent Washington from passing to the right, "except that it would not be customary for "us (Washington) to go away out in the middle of the river "to go around a ferry-boat;" that (folio 340) the speed of Washington was not far from twelve miles an hour; that (folio 344) it was not till Washington was within one hundred yards of ferry-boat that he rang his bell to slacken speed.

Bertain, a witness called in behalf of the Washington, swears (folio 301) the ferry-boat was five or six hundred yards off when he first saw her, and there was *nothing* to "prevent "the Washington passing astern of the Gregory."

O'Reilly, a seaman, standing on steamship Mariposa, and a witness called by ferry-boat, says, (folio 183,) "if Washing-"ton had ported her wheel she would have gone astern of the

"Gregory;" "*three or four spokes* of Washington's wheel "would have cleared them." (Folio 189.)

Although the pilot of the Washington swore on direct examination, in the court below, (folio 341,) that he was off betwixt Piers 43 and 44, say (folio 353) four or five hundred yards from her when he first discovered ferry-boat, yet, on cross-examination, he reluctantly confessed (folio 353) that on his preliminary affidavit before the coroner, he said he had just left Christopher-street, a point at least (see testimony of Rosa, folio 359) *twelve hundred yards* from the ferry-boat, when he first discovered the latter. This distance gave Washington plenty of opportunity to obey the 14th and 16th Rules.

"Rules of navigation are obligatory on vessels approach-"ing each other, *from the time the necessity for precaution* "*begins*, and continue to be applicable as the vessels advance, "so long as the means and opportunity to avoid the danger "remain." (*N. Y. & L. U. S. M. S. Co. vs. Rumball*, 21 Howard, 383. *The Nicholas*, 7 Wall, 663.)

Clearly, it was the duty of the Washington, whose pilot admits he knew the ferry-boat was bound for Desbrosses-street, to begin at Christopher-street to act in obedience to Rules 14 and 16.

He did not. Had he done so, Ann Cavan, and the ferry boat, would have crossed the river unharmed.

The ferry-boat, on first sight of the Washington, warned her, by one sharp, distinct blast of the whistle, that it would keep to the right in the direction of its slip.

Independently, however, of a necessity of making her slip, "steamers approaching each other, from opposite direc-"tions, are required, by the general rules of navigation, as "well as by the recent acts of Congress, to port their helms, "and *pass to the right.*"

The Vanderbilt, 6 Wallace, 230.

The obligation on the part of the two steamers to keep to the right, under the circumstances in which they found themselves, is imposed by law, and therefore the Washington was bound to know what the ferry-boat would do under the rules of the road, not less than the purpose of making her slip, and to act thereon. But, as before stated, the ferry-boat, out of excess of caution, also gave, by its single blast signal, an indication and warning to the Washington what the ferry-boat's course would be.

The evidence as to the whistle is conclusive:

> SMACK (folio 69) swears: "I blew one whistle that I would pass to the right." * * "Twenty or twenty-five seconds after, I blew again one distinct blast, and received no answer."
>
> NICHOLAS, mate of steamer of City of New-York, on board his boat at Pier 39, on New-York side, (folio 100,) says: "I heard a signal before I saw the Gregory; it was one single blast; it came from below the head of our pier." * * "I heard (folio 113) two blasts about thirty seconds apart."
>
> SCHOONMAKER, passenger on the ferry-boat, (folio 117,) heard plainly a whistle, one single blast, quite loud, but could not say positively from what boat.
>
> WILLIS, chief officer of Mariposa, was on board her, lying at end of Pier 46, "heard (folio 166) the Gregory blow one distinct whistle."
>
> DARLING, agent of a steamboat company, stood on end of pier of Desbrosses-street ferry, and (folio 175) heard a whistle in a southwest direction from where he stood.
>
> O'REILLY, seaman on Mariposa, saw (folio 181) from his boat, the ferry-boat when on the Jersey

side, coming northeast, or E. N. E., and heard one whistle from her, and then another, and also saw the steam from the ferry-boat which accompanied the whistles.

HAUSCHE, passenger on ferry-boat, heard (folio 202) one whistle.

HUTTON, locomotive engineer, standing on end of Desbrosses-street pier, heard (folio 210) one blast from ferry-boat, and shortly afterwards another.

MCCARTHY, deck-hand on ferry-boat, heard (folio 253) the two distinctly separated whistles.

BERTAIN, on board Washington, heard (folio 303) one whistle from ferry-boat.

SHERMAN, a seaman, standing at Barclay-street pier, a thousand yards from Pier 39, and a son of the pilot of Washington, *saw* (folios 312, 315) the steam from ferry-boat indicating one whistle, but did not hear whistle.

If none of the navigating officers of the Washington heard this signal of the ferry-boat, it indicates very plainly their inattention to their proper duties, and the heedlessness—to characterize it by no harsher word—which existed on the excursion boat. The whistle was distinctly heard by not less than ten witnesses, some on the ferry-boat, others on and near Pier 39; one a thousand yards away at Barclay-street, and another, (Bertain,) who was on board the Washington.

Second Point.

The laws of navigation, and the reciprocal obligations of the two steamers to each other, made it proper for the

ferry-boat to shape her course toward her slip just as she did, and made it improper, on the part of the Washington, to run across the track of the former as she did.

This case cannot be made to turn upon conjecture as to what the ferry-boat might *possibly* have done to keep out of the way of the Washington, but upon what the rules of the road require each boat to do.

The ferry-boat *could*, perhaps, at first have kept to the left, and so gone clear of the Washington far up the river, and far beyond her known point of destination.

We are not before this tribunal, however, to inquire what the ferry-boat could, but what she *ought* to do.

In this sense, and assuming to be true the statement of the pilot of the Washington, that the ferry-boat was (folio 341) *well off to the westward* when he first saw her, it is inconsequential that *he* thought he could run down past the ferry-boat's slip before the ferry-boat came up. There was a "risk of collision" involved, and the Washington was bound to keep out of the way of the ferry-boat, not by running for luck under her bows, but by keeping to the right, and so passing under her stern. Can there be any doubt that Rule 14 required this?

If this 14th Rule is a *law* to be obeyed, what defence, or even excuse, or palliation for the Washington, is it for her pilot to say, that when near Christopher-street, or below, he saw the ferry-boat, he supposed a continuance of the course she was *that minute* on, would bring her to Pier 46, or would carry the ferry-boat westward and outside the Washington, or that possibly the condition of the tide was such that this navigator or that navigator would have taken the ferry-boat a little above her slip, and then sagged down and into it with the tide?

Third Point.

It was no violation of law for the ferry-boat, on discovering the Washington, to lay her course more in the direction of her slip; nor was such movement of the ferry-boat any defence or excuse for the conduct of the pilot of the Washington in this instance.

Article 19 is controlling on this point.

There were "special circumstances" in the case of the ferry-boat, which the pilot of the Washington, by admitting that he was aware of the business and destination of the former, must be held in law to have known, and which justified the ferry-boat in shaping her course at the time, and in the manner she did.

It is not set up here that the ferry-boat had any monopoly or prerogative rights in the river, to which other boats, obeying the rules of navigation, were bound to give way. But it *is* claimed that when the business, the track, the destined slip of a ferry-boat, and the necessity of her uninterrupted passages to and fro, are as notorious as in this case, they do constitute the "special circumstances" of Article 19, which would permit her to make the movement toward her slip, which the Gregory made in presence of the Washington, and when by keeping her course there would be "immediate danger" of collision. The ferry-boat had a right to suppose that the Washington would act on the theory that the former would go for her slip, and, therefore, not so to do, but keep her then line of direction, would have brought about immediate danger.

Under no rule of navigation had the Washington a right to attempt to run between the ferry-boat and the New-York shore, and the pilot of the ferry-boat cannot in law be required to have assumed such an effort possible on the part of the Washington. By Rule 18, as applied to the present case,

"the course" of the ferry-boat was into Desbrosses-street slip. That was the *course* she was bound to *keep*. That was the course, "*out of the way*" of which the Washington was on the other hand bound to keep, but instead of which the pilot of the Washington ran, in the most obstinate manner, directly across what he admits he knew at the time was the way of the ferry-boat. Was that keeping *out* of the ferry-boat's way?

Fourth Point.

The Washington defends her conduct on the false pretense that she had a right to suppose, and did suppose, that the ferry-boat was not going to her slip, but much further up the river.

On this point, we first bespeak careful attention to the very mixed testimony of Michael Sherman, pilot of the Washington. This (folio 337) is his story:

From Christopher-street, I ran down the river about south, and 200 or 300 yards from the end of the piers, at a speed not far from 12 miles an hour, with the land; was at the wheel myself; my boat was about off betwixt Piers 43 and 44 when I first saw the Gregory; my course was then about south; I did not make any change in my wheel, or course of my boat, from then up to the collision; my boat was about 200 yards off the pier when I first saw the Gregory; *I had run* (*folio* 350) *to Pier* 43, *in the neighborhood of* 300, *it may be* 400 *yards, after I first saw the ferry-boat, before I blew my whistles;* it was (folio 342) not half a minute after I discovered her before I gave whistles; the ferry-boat, when I first discovered her, was (folio 342) all of 500 yards from the end of New-York piers, almost up to Pier 39, and the same distance from the Washington; when (folio 355) I blew my whistles, a line drawn to the New-York shore from the point at which the ferry-boat then was, would be 200 or 300 yards south of a

line drawn east from point at which I then was; there was (folio 351) nothing to prevent me from passing to right of ferry-boat; almost shortly after I blew my whistle, the ferry-boat was changing her course toward the New-York docks; "*I don't know but she was changing her course then;*" I (folio 354) knew the business of the ferry-boat and her point of approach; after I blew my whistles, I (folio 357) supposed the ferry-boat would go in her slip under my stern, or astern of us, go in the slip; I don't know (folio 352) but I testified before the coroner that when I had just left Christopher-street. (by Rosa, 775 yards above Pier 42,) I discovered ferry-boat; ferry-boat (folio 342) was heading *up* when I first saw her.

Now, out of this confused and confusing testimony of the pilot of the Washington, the truth to be drawn is this: He was up about Christopher-street when he first saw Gregory, heading up and across; when he was at Pier 43, about 366 yards from Pier 39, he saw the ferry-boat, which had previously blown one whistle, turning more to the east to reach her slip, and *then*, if at all, he blew his whistles. He swears that he don't know but ferry-boat was changing her course when he blew his whistles. It is quite likely that when at Christopher-street he saw the ferry-boat, she was on a course which, if kept steadily, would have landed her against Pier 46, but such was not her course when Washington was at Pier 42, and he says he blew his two whistles. Then the ferry-boat had turned more to the east. So it is absurd to say that if the ferry-boat had kept her course when Washington pretends to have blown whistles, she would have passed 100 or 150 yards (folio 343) west of Washington.

The testimony of Jacob Sherman and Bertain, two witnesses called for the Washington, stamp our theory with the mark of truth.

James Sherman, (folio 275,) chief-engineer of Washington, son of her pilot, was *walking forward*, and in forward gangway door of Washington, which (folio 280) was then opposite Piers 42 and 43, when he first saw ferry-boat off Pier 39, and "heading for about where we were then," angling across

and up. He "walked out about *eight feet* further to the chain boxes," and then saw the ferry-boat had swung her head more toward her slip.

On cross-examination, (folio 283,) he says, in reply to the inquiry *when* the ferry-boat first commenced to sheer to the right, "*she was sheering when I first got a look at her.*" The question was repeated in this form:

Q. Then, I understand you to say, when you *first* saw the Gregory, she was sheering to the southward?

A. Yes, sir; *as soon* as I saw her, and I saw she was sheering.

Nicholas Bertain testifies, (folio 299,) that he was on Washington, standing in forward gangway, port side, *opposite Pier* 42, when he first saw ferry-boat, which was distant 500 or 600 yards, and pretty much off Pier 39, "heading (folio 303) *above* the Washington, if any thing." I heard one whistle from the ferry-boat and saw the steam escaping, when she was (folio 301) 500 or 600 yards from Washington. Did not hear any whistles from Washington.

The pilot of the Washington therefore cannot at any time, after leaving Christopher-street, have supposed she was going to Pier 46, because if, prior to his reaching Pier 43, the ferry-boat, in angling across, was headed towards Pier 46, he knew by her business that that pier was not her destination, no matter what the tide; and when he reached Pier 43, the ferry-boat had sheered and headed directly to her slip, and *then* of course he knew she was not going to Pier 46.

When the pilot of the Washington really began to think seriously about the ferry-boat, and to take whatever steps in navigation he did to avoid collision, either by blowing two whistles or otherwise, the ferry-boat had changed her angling upward course, and was headed more across the river. There was no time after the Washington reached Pier 43, where her pilot *thinks* he blew two whistles, that the course of the ferry-boat would have gone under the stern of the Washington.

Fifth Point.

The Washington was solely in fault, and her bad conduct was the only cause of the collision. The Courts below were under misapprehension in holding that the ferry-boat deviated from her course,—after the pilot of the Washington began to do whatever he did to avoid the collision, either by blowing two signals or any thing else,—and thereby contributed to the collision.

The inquiry is, as we have already seen, not whether the ferry-boat could *possibly* have prevented the collision by stopping, or going straight up the river, but what laws of navigation,—what duties to each other,—were the steamers reciprocally under at the time.

If the ferry-boat was pursuing her regular and usual course, known to the pilot of the Washington to be such, then the latter had no right to run across it.

When the pilot of the Washington took whatever steps he did at Pier 43, such as blowing signals, he knew the ferry-boat had ported her helm, and was rounding into her slip. This we have from his own admission. (Folio 352.)

The pilot of the Washington admits, on cross-examination, (folio 350,) that he ran from Pier 46 to Pier 43, a distance of some 350 yards, before blowing any signals.

Independently of signals, it certainly cannot be denied, that the ferry-boat had the right of way, and was perfectly correct in every thing she did.

The conduct of the Washington was reckless in the extreme.

Her pilot, in fact, saw the Gregory long before reaching Pier 46, and had so sworn on a former occasion.

He knew the course she would take; knew the tide could make little, if any, difference in the distance she would go above Pier 39.

It is quite clear as to tides, that there could have been but little motion of the water in either direction; for, whilst the pilot of the Washington says it was *ebb*, the pilot of ferry-boat says (folio 77) it was slack off shore, and setting up along the docks, and other testimony is equally conflicting on this point.

The witnesses, Allen W. Seaman, Isaac Willetts, Andrew J. Darling, Peter O'Reilly, and Thomas Hudson, all say, it was the first of the flood tide along the docks.

And with this difference, as to the state of the tide, it is safe to assume that but little, if any, calculation on account of it, would have been made by ferry-boat pilots on entering the slip.

It is respectfully submitted that the collision was not caused by any fault, or bad navigation of the ferry-boat, and therefore the entire loss should be borne by the Washington.

Sixth Point.

The conduct of the ferry-boat was free from fault; and to hold otherwise, would be to impose upon the numerous ferry-boats crossing the Hudson River and entering New-York slips, the duty of deviating from their known path, or stopping their engines whenever an excursion boat, in passing up or down close to the piers, saw fit to cross their track.

SIDNEY WEBSTER,

Advocate.

Supreme Court,

OF THE UNITED STATES.

ANN CAVAN,

Libellant and Appellee,

vs.

THE STEAM FERRY BOAT D. S. GREGORY, Her Tackle, &c., THE NEW JERSEY RAILROAD & TRANSPORTATION COMPANY,

Claimants and Appellants,

And THE STEAMBOAT GEORGE WASHINGTON, Her Tackle, &c., WILLIAM MYERS and Others,

Claimants and Appellants.

Brief and Points of Counsel for Appellee.

New York:

EVENING POST STEAM PRESSES, 41 NASSAU STREET, COR. LIBERTY.

1870.

EVENING POST Steam Presses, 41 Nassau St., cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

ANN CAVAN,
Libellant,

vs.

The steam ferry boat D. S. GREGORY, her tackle, &c., The New Jersey Railroad and Transportation Company, Claimants, and the steamboat George Washington, her tackle, &c., William Myers and others,
Claimants.

Nos. 169 and 256.

Brief and Points of Libellant's Counsel.

Statement of the case and points of the libellant, the respondent, on the appeals of the New Jersey Railroad and Transportation Company, claimants of the *D. S. Gregory*, and William Myers and others, claimants of the steamboat *George Washington*.

POINTS.

I.—This case comes before the Court on the appeal of the New Jersey Railroad and Transportation Company, claimants of the steam ferry boat *D. S. Gregory*, (Fols. 407, 412,) and the appeal of William Myers and others, claimants of the steamboat *George Washington*, (Fols. 415, 418,) from the decree of the United States Circuit Court for the Southern District of New York, (Fols. 403, 406,) affirming the decree of the District Court, (Fols. 381, 382,) as against the said vessels adjudged to be in fault for the injuries arising from the collision in the pleadings mentioned, and further decreeing that the amount of damages be equally apportioned between the claimants of the said vessels *D. S. Gregory* and *George Washington*, and that in case the claimants of either vessel should be unable to pay, then that the claimants of the other vessel should be held and be responsible for the whole amount of damages.

II.—The action was brought in the District Court of the United States for the Southern District of New York, by the libellant, Ann Cavan, against the said steam ferry boat *D. S. Gregory*, and the said steamboat *George Washington*, to recover the sum of $10,000 damages, for personal injuries sustained by the libellant while a passenger on board of the said steam ferry boat *D. S. Gregory*, from a collision between said ferry boat and the said *George Washington*, in the Hudson river, on Sunday, September 16th, 1866, while the said ferryboat *Gregory* was proceeding from her slip in Jersey City to her slip in New York, upon one of her regular trips.

No negligence or fault on her part contributing

to her injuries is alleged against the libellant in the pleadings, or imputable to her on the evidence. The question was principally whether the libellant is entitled to recover against both the *Gregory* and the *Washington*, or against only one, and if so, which one: a question depending upon whether both were in fault, or only one, and which one of them, in producing the collision.

The libellant claims that the collision was produced by the mismanagement and fault of both vessels.

The claimants of the *Gregory* impute it to the fault of the *Washington*.

The claimants of the *Washington* impute it to the fault of the *Gregory*.

III.—The pleadings.—

In the libel in the fifth article thereof, (Fols. 5–6), it is alleged that the collision and the damage arising therefrom to the libellant was caused by the negligence and want of skill of the persons navigating the *Gregory*, and by the negligence and want of skill of the persons navigating the *George Washington*, and by their joint negligence, fault and improper conduct, and not by or through any fault or negligence of the libellant. That the said steamboat *Washington*, and the said steam ferry boat *Gregory*, was each in fault in not stopping and backing before said collision, or in not keeping a good look out, or other fault or mismanagement of the persons in charge of the said vessels.

In the answer of the claimants of the *Gregory* in the second and third articles thereof, (Fols. 33–35), it is alleged that the collision was caused by the *Washington*'s negligently attempting to continue her course, and cross the bows of the *Gregory*, after

the latter had ported her helm, so as to head into the New York shore, and pass to the right of the *Washington*, and blown at short intervals two blasts of her steam whistle as signals to the *Washington* of the course she intended to take, which signals were not answered or heeded by the *Washington*, which, instead of porting her helm and passing to the right of the *Gregory*, kept on her course without slackening or stopping until within twenty yards of the *Gregory*. It is further alleged in the answer, that the *Gregory* after blowing the second blast of her whistle, and perceiving that it was disregarded by the *Washington*, stopped her engine, then being within about three hundred yards of the *Washington*.

In the answer of the claimants of the *Washington*, in the third article thereof, (fol. 38,) it is alleged that, as the *Washington* was going down the North River in the usual track, the *Gregory* was going across the river, and in the usual course of things the *Gregory* would have passed under the *Washington*'s stern, but that in consequence of the negligence and want of skill of the persons in charge of her, she approached the *Washington*; that the *Washington* blew two blasts of her steam whistle to indicate that she was going ahead of the *Gregory*, to which no attention was paid by the *Gregory*, and the *Washington* finding that the *Gregory* was attempting to pass ahead of her, stopped and backed, but could not avoid the collision.

In the seventh article of said answer, (fol. 39,) it is alleged that the collision occurred on Sunday, and that the libellant cannot recover because she was travelling in the State of New York in violation of a law of said State, and such injuries as she received were received while violating such law.

IV.—The evidence as to the circumstances bearing upon the collision and the damages, grouping together, the witnesses called by each.

I. The libellant called—

As to the circumstances of the collision:

1. William C. A. Ferichs, passenger on board the *Gregory*. (Fols. 45 to 49, 361 to 364.)

2. Charles F. Wreaks, passenger on board the *Gregory*. (Fols. 49 to 56.) This witness also testified as to condition of libellant after the collision.

3. The libellant's deposition, (fols. 130 to 134,) was also read as to her position and occupation on board the *Gregory* at time of collision, result of injuries suffered by her, and amounts paid by her for nursing.

4. Her second deposition, (fol. 144,) was read as to her destination and her purpose and object in travelling on the Sabbath.

As to extent of injuries sustained by libellant, and upon question of damages—

5. Theodore R. Varick, M. D.
Fols. 56 to 62.

6. Susannah Schuyler.
Fols. 63 to 67.

7. Willard Parker, M. D.
Fols. 97 to 100.

8. Rudolph Rosa, *Surveyor*. As to distance between the piers, &c., on both sides of the river, where the collision took place. (Fols. 358 to 361.) Not on board at time of collision.

The claimants of the *Gregory* called as witnesses:

1. John Smack, the pilot of the *Gregory* at the wheel at time of collision.
   Fols. 67 to 97.

Recalled—(fols. 223 to 227)—

2. George Ackley, the engineer of the *Gregory*.
   Fols. 262 to 266.

3. Samuel McCarthy, deck hand on the *Gregory*.
   Fols. 251 to 262.

4. James T. Schoonmaker, passenger on board the *Gregory*.
   Fols. 115 to 124, fols. 149 to 160.

8. George Haushe, passenger on board the *Gregory*.
   Fols. 200 to 208.

6. Eaton Nicholas, mate of the steamer *City of New York*, lying at upper side of pier 9, North River, and who saw the boats come together.
   Fols. 100 to 115.

7. Allan W. Seaman, from the steamboat *Armenia*, lying on the north side of the *Gregory*'s slip.
   Fols. 160 to 164.

8. Isaac Willis, from the steamship *Mariposa*, lying off pier 46.
   Fols. 164 to 173.

9. Peter O'Reilly, from the steamship *Mariposa*, lying off pier 46, who saw the collision.
   Fols. 180 to 200.

10. Andrew J. Darling, from the end of the pier

north side of Desbrosses street, who saw the boats after the collision.

Fols. 173 to 180.

11. Charles H. Hutton, from the same pier, north side of Desbrosses street, and who saw the collision.

Fols. 208 to 222.

12. Thomas Hudson—
13. Ludwick Hoffman, } from on board ferry boat *Pavonia*. Did not see collision. Testified as to state of the tide.

Fols. 245 to 251.

14. *Charles A. Woolsey*, Superintendent of The N. J. R. R. & Transportation Co.'s ferry, as to condition of the *Gregory* before and after the collision.

Fols. 227 to 239.

15. *Michael S. Allison*, ship carpenter, as to the injury done to the *Gregory*.

Fols. 239 to 244.

16. *John M. Weeks*, U. S. Inspector of steamers, as to license of pilot of *Gregory*.

Fols. 375 to 380.

The claimants of the *Washington* called as witnesses.

1. *Michael Sherman*, captain and pilot of the *Washington* at the wheel at the time of collision.

Fols. 337 to 357.

Recalled, fols. 370 to 373.

2. *George Sherman*, Chief Engineer of the *Washington.*
Fols. 275 to 286.

3. *Theodore M. Goetchins*, Assistant Engineer of the *Washington.*
Fols. 286 to 288.

4. *Jacob Sherman*, Ticket collector on the *Washington*, saw the collision.
Deposition—
Fols. 267 to 272.

5. *Washington L. Lewis*, Ticket Agent on the *Washington.*
Fols. 288 to 291.

6. *Nicholas Bertain*, passenger on the *Washington*, saw collision.
Fols. 299 to 304.

7. *Edward H. Frank*, passenger on the *Washington.*
Fols. 304 to 308.

8. *George Irish*,
9. *George Philbrook*, passengers on the *Washington.*
Fols 317 to 324.

10. *William H. Vanderberg*, from the steamer *Armenia*, lying on the north side of the Desbrosses street slip.
Fols. 292 to 297.

11. *Frank Teason, Jr.*, Engineer of the *Armenia.*
Fols. 297 to 298.

Recalled. Fol. 316.

12. *James Sherman*, from the Barclay street pier, saw the collision and the steam from whistles of the respective boats.
Fols. 308 to 316.

As to the state of the tide.

13. *Walter L. Schultz*, pilot.
Fols. 325 to 326.

14. *Richard L. Hoffmire*, pilot.
Fols. 327 to 330.

15. *Michael Bunn*, pilot,
Fols. 330 to 333.

16. *Samuel Lemon*, pilot of the boat *Rumsey*.
Fols. 333 to 337.

17. *Carl Dubuque*, pilot.
Fol. 364 to 366.

18. *John S. Simmons*, pilot, as to tide and the whistle on the *Washington*.
Fols. 366 to 369.

19. *John Weeks*, clerk of U. U. Inspectors of Steamers, as to license of pilot of *Gregory*.
Fols. 244, 245.

V.—The facts of the collision

On Sunday morning, the 16th September, 1866, at about 10 o'clock, as passengers on board were going to churches in the city, the ferry-boat *D. S. Gregory*, with the libellant and other passengers on

board left her slip, at the foot of Montgomery street, Jersey City, on a passage to her slip, at the foot of Desbrosses street, New York, which latter is distant on a direct line from the former, diagonally across and up the river 1,907 yards. This distance, proved by Rosa (fol. 359.)

After she had proceeded one-fourth of her way across and upwards, the *George Washington*, an excursion boat, also with passengers on board, left the pier at the foot of Christopher street, New York, which is above the pier No. 39 North River, at foot of Vestry street, New York, bound down the river, to land at the Barclay street pier, which is still further down the river than Vestry street.

Jas. T. Schoonmaker on the *Gregory*, fol. 116.

The distance from off the Christopher street pier to off pier 39 is 1,133 yards (Rosa, 359), less than three-quarters the distance between the slips of the ferry.

The *Washington's* course from Christopher street pier was about parallel with the line of the ends of the New York piers, and about 200 yards out in the river from that line, and she continued on that course without any change of direction to the place of the collision off and just above the extension out into the river of the line of direction of the upper side of the Vestry street pier, said pier 39, the next pier below the shorter piers of the Desbrosses street ferry slip.

(This is established by the general concurrence of all the witnesses who testify to her course.)

The course of the ferry-boat after leaving Jersey City, and hauling out into the stream, up and across the river, until off pier 39, was divergent to the eastward less than three points from a course directly up the river. When off Pier 39 her course was changed so as to head directly in toward her

slip, and direct.y across the line of direction of the *Washington* coming down inside of her, by porting her helm in such close proximity to the *Washington* about passing in front of her slip, that with speed accelerated in obedience to a signal to the engineer by her pilot, the forward end of the ferry-boat was projected across the stem of the *Washington*, which had not changed her course, from thirty to forty-five feet before she was in collision with the *Washington*, which followed within thirty to forty-five seconds from this change of direction of the ferry boat—the stem of the *Washington* striking against the guard of the ferry boat about forty-five feet from the forward end of the boat (fol. 70), cutting through the guard and the ladies cabin, where the libellant was, on the port side of the ferry-boat, and crushing the libellant through the joiner work on to the carriage way on the main deck, and against the joiner work enclosing the engine, and doing her the injuries of which she complains.

The course of the ferry boat, after leaving Jersey City, and hauling out into the stream, up the river, until her pilot blew one whistle and threw her wheel aport, which threw his boat's head to the right more directly in towards the City, when (according to her pilot's estimate) 600 yards off from the New York side and about on a line with Pier 39, as described by her pilot, was about a northeasterly course, northeast or northeast by east.

John Smack, fol. 68, 69, 73, 77, 88.

The course of the river there being north north east, or more accurately, north northeast, half east, (Woolsey, Superintendant of the Ferry, at fol. 235, Rosa, 360) the course of the ferry boat before porting northeast or northeast by east, as testified to by her pilot, fol. 76, 77, was divergent

from a course straight up the river less than three points.)

The pilot of the ferry boat after blowing his first whistle and porting when out in the river, about on a line with Pier 39, kept his wheel aport until the collision occurred and without stopping until struck by the *Washington.*

(His testimony, fol. 83.)

The ferry boat was running at the rate of nine to ten miles an hour (fol. 70); and just after his first whistle and before the collision, the pilot of the ferry boat rang the jingle bell to go ahead faster, and this signal was obeyed by the engineer. (Testimony of George Ackley, the engineer, fol. 262–265.)

The testimony of the pilot, that at the time he blew his first whistle and ported, which was when he first saw the *Washington*, that she was 600 yards above him (fol. 67) he being at the time about 600 yards off from *Washington*, (fol. 60, 91, 98, 89,) and the *Washington* somewhere about off Canal street, (fol. 93) is greatly mistaken or over estimated as to the distances

To get at a measure of what he called 600 yards, he was asked to give the distance off when he ported, in lengths of his boat. (Fol. 89, 90.)

Failing in this he was asked to give his estimate of the distance between two piers which he was every day passing, viz., 37 and 39, and he stated the distance to be 700 to 800 yards, or 600 to 700 yards.

The actual distance is 247 yards. (Rosa the surveyor, fol. 360.)

Reducing the distance he gives as the distance of the *Washington* above him when he blew his whistle and ported when in line with pier 39, in the same

proportion gives about 200 yards as the distance of the *Washington* higher up than he was when he ported from further out in the river.

Eaton Nicholas, mate of the steamer City of New York, lying on the upper side of pier 39, on which there was a house extending 160 to 170 feet beyond the stem of his boat, and standing on his boat, 240 to 250 feet inside the end of the house, by which his view was shut off from seeing below the line of direc rection of the pier (fols. 106, 107), a witness called for the *Gregory*, testifies (fols 102 and 103), that before he saw the *Gregory*, he heard one single blast of the steam whistle, and then a second single blast, and then he saw the *Gregory*.

When he heard the first whistle he remarked to the man who was standing by him, "There comes the Washington, she has got a good load of passengers for such a cold morning," (fol. 102. When he first took this particular notice of her, the *Washington* was right opposite the ferry slip; she was as low as pier 40, (fol. 104; see also at fol. 110.)

This testimony shows that at the time the first whistle of the ferry boat was blown, (immediately upon which she ported to go into her slip across the bow of the *Washington* inside of her,) the *Washington* was as low down as pier 40, the first pier above the short piers of the ferry slip, (see the map) if not actually passing in front of the ferry slip.

According to his testimony both boats were running with unabated speed at the time of the collision. The *Gregory* pointing toward her slip about straight, and the *Washington* striking her at right angles, (fol. 103.)

He could not see her when she ported. But her direction as testified to by him, when he saw her, which was after she had ported, shows the extent of the sheer from her course before porting. From his

testimony it appears that from the time of the first whistle heard from right out from the end of pier 39 to the collision, was not over 45 seconds, (fol. 113, collated with 110.)

The testimony of Smack himself, (fol. 69,) to the effect that within, perhaps, 20 or 25 seconds, or about there after he ported, thereby throwing his head tothe right, in the position his boat was then in, and the position the *Washington* was in, the only alternative he saw was to keep his course and do his best to get out of his way if possible, is strong evidence that the *Washington* passing down inside of him was in so close proximity as to make the attempt to pass into the slip ahead of her, a movement of extreme rashness.

On the course of the *Gregory* as above described until on a line with pier 39 before porting from her, place further out in the river than the course of the *Washington*, about to pass in front of the ferry slip it is evident that she was on a course if continued to pass the *Washington* under her stern.

The testimony of the witnesses on the part of the *Washington* would seem to place it beyond reasonable doubt that before the change of direction by porting, the *Washington* was less than 200 yards higher up the river though more distant on the diagonal, and that the ferry boat was on a course to pass the *Washington* under her stern.

Michael Sherman, pilot of the *Washington*, 341, 342, 343, 344.

Nicholas Bertain, a passenger on the *Washington*, 298 to 304.

James Sherman, on the head of pier at foot of Barclay street, fols. 308 to 316.

The change of direction of the ferry boat by port-

ing her helm followed immediately upon a signal by one blast of her steam whistle, without waiting for a response from the *Washington*, and on observing that it was not heard or was not heeded by the *Washington*, this signal was repeated and the jingle bell rung on the ferry boat to quicken her speed across the bow of the *Washington* notwithstanding this observation.

When to the above it is added that the day was clear, that there were no obstacles in the river to intercept her view of the *Washington*, all the while in plain sight or to interfere with the *Gregory's* proceeding on the safe course she was on before porting her helm, or from checking her speed or stopping and reversing on observing that the *Washington* did not change her course, the case presented on the part of the ferry boat is one of great recklessness, and in as flagrant disregard of maritime rules designed to prevent collisions as of her duty to her passengers.

VI.—From the *Washington* the course of the ferry-boat in coming up the river from below gradually hauling over to the New York side of the river until and on changing her direction to a course across the line of direction of the *Washington*, when off pier 39 was in equally plain sight. And it is difficult to resist the conclusion that there was a want of due caution on her part in proceeding at full speed across the slip to which the ferry-boat was bound and on her near approach without easing her engine or checking her speed or stopping and backing until so late that her engineer under pressure "to back her strong" was enabled to make according to the testimony from on the *Washington*, but three revolutions back before the collision without sensibly diminish-

ing her speed or in not porting her helm, as required by the special circumstances of the case on observing the change of direction of the ferry-boat at a point according to the testimony of her master 150 to 200 yards off so far out in the river from the line of direction of the *Washington*, that the ferry boat was only enabled to get across her bow by increasing her speed; and that if not like the ferry boat running a muck to get ahead of the other boat, she was like the ferry boat unmindful of the duty enjoined by rules of navigation which "are obligatory upon vessels approaching each other from the time the necessity for precaution begins and continues to be applicable as the vessels advance, so long as the means and opportunity to avoid danger remains." (Rumbell *v.* The Pacific, 21 How. Rep. 372, 384.)

The Governor, 1 Cliff, 97.

VII —The signals by the steam whistle on the ferry boat, according to the testimony, were not heard on the *Washington* by any person navigating her, (fol. 343); on which latter boat a signal, by two blasts of the steam whistle, was blown.

The signal from the *Washington*, according to the testimony, was not heard on the ferry boat.

It appears from the testimony of James Sherman, on the pier at Barclay street (fol. 312), that the signal on the *Washington* was prior in time.

And the fact proved also by other witnesses being that such a signal was given on the *Washington;* this testimony as to the priority is rather confirmed by the testimony of witnesses whose attention was first attracted by hearing the signals on the ferry

boat that they heard no signals from the *Washington*.

The signals from the *Washington* the pilot of the ferry boat must have heard if attending to his business, and should have heeded, and in not doing so he was in fault.

Each party probably relied on the other's conforming to his signal, and this is the justification set forth in the answer of the *Gregory*, without waiting for response or other precaution, and this was a further fault.

Vide McCord *v.* The Steamboat Johnson and Propeller Burden, 5 Blatch. C, C, 400, affirmed in this Court.

This reliance was less culpable in the *Washington* if the ferry boat, at the time of his signal, was on a course to pass under the former's stern, but it was a greater fault on the part of the ferry boat to rely upon his signal being conformed to, and to follow it up immediately by a change of course across the *Washington's* bow at the risk of a collision made imminent by this rash movement.

VIII.—A steam ferry boat is subject to the same rules as to her navigation, statutory and other, as other steamboats. In particular she is under the same obligation as to look-out.

The Ferry Boat John Adams, 1 Cliff., 410, 411.

The ferry boat in this case was in fault in having no look-out, except a pilot at the wheel, who was in

sole charge of her navigation, without the assistance of other officer or man on deck. To this omission the casualty is directly referable.

It appears from the testimony of the pilot, that on arriving in line with pier 39, that he blew his whistle and put his helm a-port immediately upon seeing the *Washington*, which it is not supposable he would have done if he had apprehended her true position.

IX.—Upon the proof showing that the ferry boat, when off pier 39, was on a course before porting to pass abaft the beam or under the stern of the *Washington*, proceeding down inside of her, the rule of navigation applicable to two steamers meeting end on, or nearly end on, so as to involve risk of collision, requiring them to port their helms does not apply; and the pilot of the ferry boat was therefore in fault in porting, even if it had not been obvious, if keeping a good lookout, that his doing so would under the circumstance of the relative bearing of the two steamers endanger a colllision.

Last first clause of Article 19.

X.—Upon proofs showing that the ferry boat was on a course to pass the *Washington's* stern before porting her helm, Article 14 of the Act of Congress of April 29, 1864. which applies to the case of steamboats crossing so as to involve risk of collision, and standing starboard side to port side, is not applicable, nor if applicable, taken in connection with article 18, is it available as a ground of defence for either boat for the reason that the *Washington*, whose duty in

such case it would be to keep out of the way, kept her course, and the ferry boat, whose duty in such case it would be to keep her course, changed her course.

XI—Upon application of Article 16, of that Act, each, when approaching the other so as to involve risk of collision, should immediately have slackened her speed, and stopped and reversed.

See as to this the allegation in the answers, (that of the *Gregory* at close of fol. 33, that of the *Washington* at fol. 38.) which are not sustained by the proofs.

As to the *Gregory*, instead of stopping and reversing, she quickened her speed.

There is nothing in the suddenness of an emergency caused by the previous negligent navigation of a vessel to excuse her for not complying with the rule.

XII.—An improper movement rendering a collision imminent immediately following a corresponding signal by the steam whistle, without waiting for a response or coming to an understanding with the other vessel as to her course, or accompanied by such signal, is not justified by such signal.

See Rules of Supervising Inspector, particularly Rules 3 and 4.

Each boat giving or adhering to a signal of its intention to go ahead of the other, in as close proximity, as were these steamboats on the porting of the ferry boat's helm, and then forging ahead with

great speed, the ferry boat with quickened speed, until in too close proximity to avoid a collision before a proper answer was received, and a mutual understanding come to as to the course or intention of the other, imports great culpability on the part of each.

XIII.—As to the jurisdiction.

This action was properly brought in Admiralty. Those Courts have unquestionable jurisdiction over all actions of tort, either affecting the *person* or property growing out of navigation, where the wrongful act is committed upon the high seas, or the public navigable waters of the United States, even though such waters are within the body of a county of the State, and not affected by the tide. Locality being the test of Admiralty jurisdiction in such actions, no objection can be raised on that score in this case, as the accident occurred on the tide waters of the Hudson River.

King *vs.* Steamboat *New World*, 16 Howard, 469, and cases there cited by this Court.

Chamberlain *vs.* Chandler, 3 Mason's Report, 253.

The Sybil
Eng Law Rep
2, Ad & Ecc, 24

XIV.—As to the joint liability of the two steamboats, see

The *New Philadelphia*, 1 Black., 62.

Cushing *vs.* the *Fraser* and *General Clinch*. 21 How., 184.

Colgrove *vs.* N. Y. and New Haven, Co. and N. Y. and Harlem R. R. Co., 20 N, Y. Rep., 492.

2 Parsons Maritime Law 510
The Propeller Commerce
1 Black 574

In the first case Judge Wayne, delivering the opinion of this Court, says :

" The rule of law is, that when a third party has sustained an injury from the co-operating consequences of two causes, though the persons producing them may not be in intentional concert to occasion such a result, the injured person is entitled to compensation for his loss from either one or both of them, according to the circumstances of the accident.

In Colgrove agst.. the Railroad Companies, the liability of the two Companies to a passenger for an injury resulting from the negligence of both, was held to be undoubted.

XV.—As to the point raised by the claimants of the *Washington*, in the seventh article of their answer, (fol. 39) that the libellant was travelling on Sunday, in violation of the laws of the State of New York, and therefore cannot recover.

The statute in question reads as follows :

" Nor shall any person travel on that day (Sunday), unless in case of charity or necessity, or on going to or returning from some church or place of worship, within the distance of twenty miles, or in going for medical aid, &c., &c."

" Every person being of the age of fourteen years offending against the provisions of this section shall forfeit one dollar for each offence."

1 N. Y. Rev. Stat., Edmond's ed., page 628, sec. 70.

It appears by the testimony of the libellant that she was on her way to church within twenty miles from her residence (fol. 144), and that this was the

occasion of her being on the ferry boat. This is, of course, conclusive as to the point raised by the claimants of the *Washington*, but had she been travelling on any other errand, or for any other purpose, this defence would have been of no avail. The statute simply prescribes the duty of citizens to the State, *and to the State only*, in regard to the observance of the Sabbath. The penalty for the offence is prescribed, viz., one dollar for each offence. It would be absurd to reason that the claimants of the *Washington* should be allowed to take advantage of their own wrong (they being in palpable violation of the statute), to defeat the claim of the libellant.

Mohney *v.* Cook, 26 Penn. Rep., 342.
Phil. Wil'n and Balt. R. R. Co. *v.* Phil. and Havre de Grace Steamboat Co., 23 How. Rep., 209.

XVI.—As to the damages:

The injuries sustained by the libellant were very severe. By the force of the collision she was driven through the partition forming the starboard side of the ladies' cabin out upon the carriage-way on the main deck (fol. 53), and the broken beams and timbers of the ferry boat were hurled down upon her (fol. 131.) Her left leg was broken in one place (fol. 58), and the ankle badly sprained (fol. 131.) Her right leg sustained what is known as a "comminuted fracture," *i. e.*, there were three distinct fractures of both bones of the leg between the ankle and the knee, and the lower part of the leg bone was crushed like an eggshell fracture, all smashed up."

Dr. Varick, end of fol. 57.

Her right ear and cheek were cut, and also the back of her head, and she sustained severe bruises about the body. (Fol. 131.)

In consequence of these injuries, it was fully six or eight weeks before the libellant could stir in her bed (fols. 59 and 132), she required constant attention and lifting, suffered intense pain and was only able to sleep by the aid of anodynes. (Fols. 59 and 64.) She was unable to move about at all until about Christmas, 1866, when with crutches and the assistance of two persons to help her, she attempted to walk across her room and fainted before she reached her chair. (Fol. 65). In June, 1867, nine months after the collision, she first attempted to go down stairs, but fainted before she got down. (Fol. 65). At the time of the trial in the District Court, nearly two years after the accident, she suffered constant pain. (Fol. 66.)

She is permanently disabled from earning her own livelihood; one leg is shorter the other, and there is very little motion, if any, at the ankle of the right foot.

Dr. Varick. (Fol. 60).

Dr. Parker. (Fol. 98).

Mrs. Schuyler corroborates the medical testimony. (Fols. 65 and 66).

1. The libellant is entitled to recover the outlay and expense to which she has been subjected in consequence of the collision. She paid one hundred dollars out of her own pocket for nursing. (Fols. 133 and 134). The bill of Dr. Varick, her medical attendant, amounted to $613 00, but his services were really worth more—fully $1,000, as Dr. Parker says. (Fol. 99).

In addition to this she received a great deal of care and nursing necessary to a person in her physical condition, for which, though gratuitously bestowed, the claimants are not entitled to credit. This care and nursing continued from the time of the collision till May or June, 1867 (fols. 50 and 65 and 66), and was therefore no inconsiderable item. If, therefore, we fix the sum to be repaid as for actual outlay, including the $100 paid by the libellant, the $613 paid to Dr. Varick, and the expenses of nursing, at $1,000, it must be considered a moderate estimate.

2. The libellant is entitled to recover such a sum as will be proper compensation for the pecuniary loss resulting from her permanent disability to earn her own livelihood. (Fols. 60, 61 and 98). It is submitted that the following is a fair and proper method of estimating such loss.

The libellant at the time of this collision was earning $12 a month, $144 a year. (Fol. 133). In addition to this, she was receiving, as part of her compensation, her board and lodging. The value of this can be easily estimated. In this City and its vicinity (where the libellant had always lived;) persons in her walk of life can procure ordinary board with strangers at $3 00 a week, on condition of lending a helping hand in the family. This the libellant is incapacitated from doing. Ordinary board without this condition is $5 00 a week, and in respectable families, suitable for church going people like the libellant, it is fully $6 00 a week. This for one year amounts to $312, which added to $144 wages, gives us as the amount which the libellant was earning at the time of the collision, $456 a year. Her age was 40 years. (Fol. 130). The sum required to produce an annuity for life equal to the amount she was earning at the time of her injuries when cal-

culated according to the Northampton Tables, would be $4,881 48. Add this to the amount estimated as for actual outlay, viz., $1,000, and we have $5,881 48.

This is an estimate analogous to cost of repairs in a chattel, regarding the libellant as not sentient.

3. But in addition to this the libellant is entitled (as a distinct and separate item of damages) to recover for bodily pain and anguish and for mental suffering as well.

Sedgwick on Damages, 109 and cases there cited.

Morse *v.* Auburn and Syracuse R.R. Co., 10 Barb., 623.

Ransom *v.* N. Y. and Erie R. R Co., 15 N. Y. Rep., 415.

Curtiss *v.* Rochester and Syracuse R. R. Co., 18 N. Y. Rep., 534.

Segur *v.* Town of Barkhamsted, 22 Conn., 298.

Linsley *v.* Bushnell, 15 Conn., 225.

It is submitted that $5,000 is a small compensation for the bodily and mental suffering sustained by the libellant.

4. This would seem to be a case for exemplary or punitive damages, because of the gross and wanton negligence, without which this collision could not have occurred.

Philadelphia and Reading R.R. *ads.* Derby, 14 Howard's Rep', 486.

New World *v.* King, 16 How., 474.

Whipple *v.* Walpole, 10 New Hampshire, 130.

Linsly *v.* Bushnell, 15 Conn., 225.

The circumstances of this case show unparallel-

ed negligence. The day was clear and the river unobstructed. Each boat had plenty of room to keep out of the other's way, but they were crashed into each other without warning to the passengers on the ferry boat (fol. 132), and with the most utter disregard of their safety.

(*a.*) The power of Courts of Law to inflict punitive damages in cases where gross negligence has caused the injury is definitely settled.

Day *v.* Woodworth, 13 Howard's Rep., 363.

(*b.*) And the power of Courts of Admiralty to award similar damages in cases of marine torts and personal wrongs is as fully settled and defined as that of Courts of Law.

Chamberlain *v.* Chandler, 3 Mason's Rep., 242.

Boston Manufg. Co. *v.* Fiske, 2 Mason-120.

XVII.—The decree of the Circuit Court affirming the decree of the District Court against both vessels, and directing that in case either vessel should make default in payment of its share. the other should be responsible for the full amount, should be affirmed, with costs.

THATCHER M. ADAMS,
Proctor for Libellant.

C. VAN SANTVOORD,
Of Counsel.

This case, in the District Court, is reported, 2 Benedict, 227, No. 3.

The following is the Opinion of the Circuit Judge:

NELSON, J.—The collision in this case between the *D. S. Gregory* and *George Washington*, in which the libellant was seriously and permanently injured, occurred on the North River, off the foot of Desbrosses Street, New York side, between 10 and 11 o'clock Sunday morning, the 16th September, 1866. The *Gregory* was a ferry boat running from the foot of Montgomery Street, Jersey City, to the foot of Desbrosses Street aforesaid, and was on her way to the slip at this place when the collision occurred. The *Washington* was on an excursion trip, bound for Barclay Street, New York, from a dock at the foot of Christopher Street, and thence down the bay.

The collision occurred in open day, and clear weather and the vessels were in full sight of each other. The *Washington* was moving straight down the river, on a range of about 200 yards from the docks on the New York side, at the rate of twelve miles the hour. The *Gregory* was crossing the river somewhat diagonally, bearing northeasterly from her Slip, on the New Jersey side, to that on the New York, at the rate of nine or ten miles, and according to the clear weight of the proofs, each continued at this rate till the moment of the collision, which of itself is sufficient ground for pronouncing both vessels in fault. It is quite apparent that neither the pilot nor master of either vessel could have been taken by surprise at the meeting of the boats, as each must have seen plainly that the courses adopted and presevered in necessarily led to it. And it is equally apparent, on the proofs, that these courses were persevered in deliberately by the pilot and master of each, with the purpose of driving their adversary to change his course; on the part of the *Washington*, to compel the *Gregory*, to cross his stern; on the part of the *Gregory*, to compel the *Washington* to pass his stern.

In this view of the case, the correctness of which we cannot doubt, we shall not stop to inquire as to which vessel is most in fault, nor to point out, upon the proofs, wherein each was in fault in other respects than that stated above, though we are satisfied the task would not be a difficult one.

The libellant was a passenger on the *Gregory*, on her way to the City of New York, to attend public worship, and while seated in the ladies' cabin, received the injuries complained of. The bow of the *Washington* struck the ferry boat on her port side, some few feet from the forward end of the cabin near where the libellant was seated, with such force as to go entirely through it, smashing the inside partition, separating it from the track of the wagon-way. The injury was of a most serious character, attended with great suffering, and permanent disability to one of her limbs, besides very considerable expense, and loss of service.

Upon the whole, we are not inclined to interfere with the amount as fixed by the Court below, and direct the damages and costs to be apportioned equally between the two vessels. As both are responsible to the libellant, we also direct that, in case of the inability of either to respond, the other shall be liable.